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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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11 TOSHIBA JOHNSON, on behalf of herself
12 and all others similarly situated, and on behalf
13 of the general public, and as an "aggrieved
Attorneys General Act of 2004,

14 Plaintiffs,

15 v.

16 THE GOODYEAR TIRE & RUBBER
17 COMPANY, an Ohio corporation, and DOES
1 through 10, inclusive,

18 Defendants.
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CASE NO.: 3:13-cv-01069-MMC

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING A
SETTLEMENT CLASS, APPROVING
FORM OF NOTICE TO THE CLASS AND
SETTING HEARING ON FINAL
APPROVAL OF SETTLEMENT**

DATE: November 22, 2013

TIME: 9:00 a.m.

COURTROOM: 7 – 19th Floor

JUDGE: Hon. Maxine M. Chesney

1 On November 22, 2013, at 9:00 a.m., the Court, the Honorable Maxine M. Chesney
2 presiding, conducted a hearing regarding the motion brought by Plaintiff Toshiba Johnson (“Class
3 Representative”) for Preliminary Approval of Class Action Settlement, Conditionally Certifying a
4 Settlement Class, Approving Form of Notice to the Class, and Setting Hearing on Final Approval
5 of Settlement. The parties appeared by and through their respective counsel of record.

6 After considering the papers and the arguments of counsel, and good cause appearing, IT
7 IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

8 1. For purposes of this Order, the Court adopts and incorporates all definitions set
9 forth in the Joint Stipulation of Settlement and Release (“Settlement Agreement”).

10 2. The Court finds that the requirements of Rule 23 of the Federal Rules of Civil
11 Procedure and other laws and rules applicable to preliminary settlement approval of class actions
12 have been satisfied, and the Court preliminarily approves the settlement of this Action as
13 memorialized in the Settlement Agreement, which is incorporated herein by this reference, as
14 being fair, just, reasonable and adequate to the settlement Class and its members, subject to
15 further consideration at the Final Fairness and Approval Hearing described below. Based on a
16 review of the papers submitted, the Court finds that the Settlement is the result of extensive arms-
17 length negotiations conducted after Class Counsel had adequately investigated the claims and
18 became familiar with the strengths and weaknesses of those claims, is recommended by Class
19 Counsel, and is thus presumptively valid, subject only to any objections that may be raised at the
20 final fairness hearing and final approval by this Court. The assistance of an experienced mediator
21 in the settlement process supports the Court’s conclusion that the Settlement is non-collusive.,
22 The Court thus hereby:

23 (a) Conditionally certifies solely for the purpose of implementing the Settlement
24 Agreement the Class defined the Settlement Agreement;

25 (b) Appoints Plaintiff Toshiba Johnson as the representative of the Class; and

26 (c) Appoints Gaines & Gaines, APLC as attorneys for the Class for purposes of
27 settlement and finds for the purposes of settlement that these attorneys are qualified to represent
28 the Class.

1 3. It is ordered that the Class defined in the Settlement Agreement is preliminarily
2 certified for settlement purposes only. If the Settlement does not become final for any reason, the
3 fact that the Parties were willing to stipulate to class action certification as part of the Settlement
4 shall have no bearing on, and will not be admissible in connection with, the issue of whether a
5 class in this action should be certified in a non-settlement context. The Court's findings are
6 solely for purposes of conditionally certifying a Settlement Class and will not have any claim or
7 issue or evidentiary preclusion or estoppel effect in any other action against the Defendant, or in
8 this litigation if the Settlement is not finally approved.

9 4. A hearing (the "Final Fairness and Approval Hearing") shall be held on
10 _____, 2014, at 9:00 a.m. before the Honorable Maxine M. Chesney, in Courtroom 7 of the
11 United States District Court for the Northern District of California, located at 450 Golden Gate
12 Avenue, San Francisco, CA 94102. At that time, the Court shall determine: (a) whether the
13 proposed settlement of the Action on the terms and conditions provided for in the Settlement
14 Agreement is fair, just, reasonable and adequate and should be finally approved; (b) whether
15 judgment as provided in the Settlement Agreement should be entered herein; and (c) whether to
16 approve Class Counsel's application for an award of attorneys' fees and costs, Plaintiff's
17 application for a service enhancement payment, and Plaintiff's request for payment of expenses to
18 the Claims Administrator. The Court may continue or adjourn the Final Fairness and Approval
19 Hearing without further notice to members of the Class.

20 5. The Court approves, as to form and content, the Class Notice attached to the
21 Settlement Agreement as Exhibit 1 and the Claim Form attached to the Settlement Agreement as
22 Exhibit 2. The Court finds that distribution of the Class Notice in the manner set forth in this
23 Order and the Settlement Agreement constitutes the best notice practicable under the
24 circumstances, and constitutes valid, due and sufficient notice to all members of the Class,
25 complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the
26 Constitution of the United States, and any other applicable laws. The Class Notice set forth
27 herein and in the Settlement Agreement provides a means of notice reasonably calculated to
28 apprise the Class Members of the pendency of the action and the proposed settlement, and

1 thereby meets the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure, as well
2 as due process under the United States Constitution and any other applicable law, and shall
3 constitute due and sufficient notice to all Class Members entitled thereto.

4 6. The Court approves the selection of Simpluris, Inc. as the Claims Administrator.
5 The Claims Administrator will administer the applicable provisions of the Settlement Agreement,
6 including, but not limited to, distributing and providing the Class Notice, calculating claims
7 against the Settlement Amount, preparing and issuing all disbursements of the Settlement Amount
8 to Qualified Claimants, and handling inquiries about the calculation of the individual Settlement
9 Amounts.

10 7. No later than ten (10) days after the date of this Order, Defendant shall provide the
11 Claims Administrator with the names, address, telephone numbers, Social Security Numbers, and
12 total Qualifying Pay Periods for members of the Class.

13 8. No later than ten (10) days after receipt of the Class List, the Claims Administrator
14 shall mail the Class Notice and Claim Form to Class Members.

15 9. To be valid, Class members must submit a fully completed and signed Claim Form
16 to the Claims Administrator, postmarked no later than sixty (60) days after Class Notice is
17 initially mailed to Class Members.

18 10. Any person may request to be excluded from the Class by mailing a request for
19 exclusion by first class mail to the Claims Administrator as provided in the Class Notice. Any
20 such request will be timely only if postmarked no later than sixty (60) days after the Class Notice
21 is initially mailed to Class Members.

22 11. The Parties are ordered to carry out and proceed with the Settlement according to
23 the terms of the Settlement and this Order.

24 12. Class Counsel shall file a motion for final approval of settlement no later than ten
25 (10) calendar days after the conclusion of the Claims Period. Any request by Class Counsel for
26 an award of attorneys' fees or reimbursement of expenses shall be filed concurrently, and that
27 request shall be accompanied by supporting evidence.
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1 13. Any Class Member who does not request exclusion from the Settlement may
2 object to the approval of the Settlement or the award of attorneys' fees and reimbursement of
3 expenses to Class Counsel or the award of a service enhancement payment to the Class
4 Representative. Any such objection will be timely only if filed with the Court and served upon
5 Class Counsel, Defense Counsel, and the Claims Administrator, as provided in the Class Notice,
6 no later than fourteen (14) calendar days following the conclusion of the Claims Period.

7 14. Any Class Member who has filed and served such written objections may, but is
8 not required to, appear himself or herself, or through counsel, at the Final Fairness and Approval
9 Hearing and object to the approval of the Settlement or the award of attorneys' fees and
10 reimbursement of expenses to Class Counsel or the award of a service payment to the Class
11 Representative. No Class Member, or any other person, shall be heard or entitled to contest the
12 approval of the proposed Settlement, the judgment to be entered approving the same, the award of
13 attorneys' fees and reimbursement of expenses to Class Counsel, or the award of a service
14 enhancement payment to the Class Representative, unless that Class Member has filed and served
15 written objections in the manner set forth herein. The Parties may file any response to the
16 objections submitted by objecting Class Members no later than (1) twenty-one (21) days after the
17 conclusion of the Claims Period, or (2) ten (10) days prior to the final approval hearing,
18 whichever date is later.

19 15. Any Class Member who does not file and serve his or her objection(s) in the
20 manner so provided herein and in the Class Notice shall be deemed to have waived such
21 objection(s) and shall forever be foreclosed from making any objection(s) to the fairness or
22 adequacy of the proposed Settlement as incorporated in the Settlement Agreement and the award
23 of attorneys' fees and reimbursement of expenses to counsel and the right to appeal any orders
24 that are entered relating thereto, unless otherwise ordered by the Court.

25 16. In the event the Settlement is not finally approved, or otherwise does not become
26 effective in accordance with the terms of the Settlement Agreement, this Order of Preliminary
27 Approval shall be rendered null and void and shall be vacated, and the Parties shall revert to their
28 respective positions as of before entering into the Settlement Agreement.

1 17. The Court reserves the right to adjourn the date of the Final Fairness and Approval
2 Hearing and any adjournment thereof without further notice to the members of the Class, and
3 retains jurisdiction to consider all further applications arising out of or connected with the
4 settlement. The Court may approve the settlement, with such modifications as may be agreed to
5 by the Parties to the settlement, if appropriate, without further notice to the Class.

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7 **IT IS SO ORDERED.**

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9 Dated: _____

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11 UNITED STATES DISTRICT JUDGE
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